

§ 162.75 Seizures limited under section 592, Tariff Act of 1930, as amended.

(a) *When authorized.* Merchandise may be seized for violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) *only* if the port director has reasonable cause to believe that a person has violated the statute and that

- (1) The person is insolvent,
- (2) The person is beyond the jurisdiction of the United States,
- (3) Seizure otherwise is essential to protect the revenue, or
- (4) Seizure is essential to prevent the introduction of prohibited or restricted merchandise into the Customs territory of the United States.

(b) *No seizure if prior disclosure.* Under no circumstances shall merchandise be seized under the authority of 19 U.S.C. 1592 if there has been a prior disclosure of the violation. This paragraph does not limit seizures under the authority of any other applicable law or regulation.

(c) *Seizure notice.* If merchandise is seized, the Fines, Penalties, and Forfeitures Officer shall promptly issue a written notice of seizure to the person concerned and to any other person the facts of record indicate has an interest in the merchandise. The seizure notice shall contain the information required by § 162.31 and shall state why the seizure was necessary.

(d) *Release of seized merchandise—(1) To person from whom seized.* The Fines, Penalties, and Forfeitures Officer shall return seized merchandise to the person from whom seized upon the deposit of security, in a form acceptable to the Fines, Penalties, and Forfeitures Officer, equal to the maximum penalty which may be assessed, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted.

(2) *To others.* The Fines, Penalties, and Forfeitures Officer may release seized merchandise to any other person upon the deposit of adequate security, in a form acceptable to the Fines, Penalties, and Forfeitures Officer, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted, and if:

- (i) The Fines, Penalties, and Forfeitures Officer is satisfied that the person

has a substantial interest in the merchandise, and

- (ii) The person submits either an agreement to hold the United States and its officers and employees harmless, or a release from the owner and/or the person from whom the merchandise was seized.

(3) *Forfeiture.* If neither a petition for relief is filed in accordance with part 171 of this chapter, nor compliance made with the decision within the time provided by law, the Fines, Penalties, and Forfeitures Officer immediately shall report the facts and refer the case to the Department of Justice for the institution of court proceedings.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 84–18, 49 FR 1679, Jan. 13, 1984; T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 88–43, 53 FR 28195, July 27, 1988; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 162.76 Prepenalty notice for violations of sections 466 or 584(a)(1), Tariff Act of 1930, as amended.

(a) *When required.* If the Fines, Penalties, and Forfeitures Officer has reasonable cause to believe that a violation of section 466 or 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intent to issue a penalty claim or a claim of forfeiture, as appropriate.

(b) *Contents—(1) Facts of violation.* The prepenalty notice shall:

- (i) Describe the merchandise, if applicable,
- (ii) Set forth the details of the error in the manifest, if applicable,
- (iii) Specify all laws and regulations allegedly violated,
- (iv) Describe all material facts and circumstances which establish the alleged violation, and
- (v) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed penalty claim or claim of forfeiture, as appropriate.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written and an oral presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed